

State of California

Public Utilities Commission
San Francisco

M E M O R A N D U M

Date : March 24, 2014

**To : The Commission
(Meeting of March 27, 2014)**

**From : Helen Mickiewicz, Legal Division
Roxanne Scott, Communications Division**

Subject : Filing of Comments with the FCC re Rural Broadband Experiments

RECOMMENDATION: The Commission should file brief Comments in the Federal Communications Commission's (FCC's) Further Notice of Proposed Rulemaking seeking comment on a number of specifics relating to the rural broadband experiments initiative adopted by the FCC in January.¹ Comments are due to the FCC on March 31, 2014.

BACKGROUND: In the FCC's November 2011 *USF/ICC Transformation Order*² the FCC adopted changes to the federal high cost universal service support mechanism to promote broadband adoption in high-cost areas. A key change was establishment of a new high-cost fund – the Connect America Fund (CAF) – to give subsidies to service providers of both broadband and voice service in unserved high-cost areas. This Connect America Fund is a key element of the FCC's universal service reforms, and is designed to ensure that rural consumers, businesses, and anchor institutions have access to next-generation networks. The FCC also set broadband speed, capacity, and latency requirements that CAF-funded broadband providers would have to meet in the areas funded by CAF.

The FCC directed the Universal Service Administrative Company (USAC) to collect \$4.5 billion annually for the CAF, and to the extent disbursements in a given year are less than collectables,

¹ See Next Generation Network Experiments in Rural America, Report and Order, *In the Matter of Connect America Fund*, WC Docket No. 10-90, rel. January 31, 2014. (FCC 14-5)

² See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, paras. 115-285 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom. In re* FCC 11-161, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

to deposit the excess in a broadband reserve account.³ Currently, USAC projects a reserve account of about \$230 Million in unallocated funding as of 1st Quarter 2014.⁴

On January 30, 2014,⁵ the FCC adopted Orders to “kickstart the process for a diverse set of experiments and data collection initiatives that will allow the [FCC] and the public to evaluate how customers are affected by the historic technology transitions” from circuit-switched to IP networks.⁶ In one of the Orders, the FCC adopted a proposal for experiments

to test how tailored economic incentives can advance the deployment of next generation networks, both wireline and wireless, in rural, high-cost areas of the country, including Tribal lands. In this experiment, Connect America funding will be available to entities to deploy high-speed, scalable, IP-based networks....Consistent with the [FCC’s] goals of bringing robust, scalable broadband networks to rural, high-cost communities across America, and gaining experience and data on how to ensure universal access as networks transition, this experiment is designed to help inform [the FCC’s] policy decisions in various proceedings pending before the [FCC].⁷

The focus of the CAF-funded rural broadband experiments will be on proposals to build robust last-mile broadband to offer service to a wide range of end users in rural communities, rather than proposals for middle-mile projects. The FCC also is focused on conducting these experiments in rural areas lacking Internet access service that delivers 3 Mbps downstream/768 kbps upstream.

The FCC has proposed making a limited amount of CAF unallocated funds in the reserve account for these rural broadband experiments, noting that using these unallocated funds in this manner could serve multiple objectives. Among those objectives would be better design of a competitive bidding process and enabling giving of funds for technology experiments across the nation.

In the *Further Notice of Proposed Rulemaking (FNPRM)* addressed in this Memorandum of Recommendation, the FCC seeks comment on a number of specific issues relating to these Rural Broadband Experiments.

³ *Id.*, 26 FCC Rcd at 17847-48, ¶¶ 559-563.

⁴ FCC 14-5, ¶ 204.

⁵ Order *In the Matter of Technology Transitions* (GN Docket No. 13-5); *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition* (GN Docket No. 12-353); rel. January 31, 2014.

⁶ FCC 14-5, ¶1.

⁷ *Id.*, ¶ 92.

DISCUSSION AND RECOMMENDATIONS:

1. Issue: The National Telecommunications Carriers Association (NTCA), a group of rate-of-return (ROR) carriers, suggests that the FCC should provide incumbent ROR carriers an initial window to submit applications for the experiments, in advance of soliciting applications from other parties. NTCA also recommends that the FCC allow the ROR carrier to undertake the same deployment proposed by a non-incumbent for the same or a lesser amount of support. The FCC seeks comment on these proposals.⁸

Recommendation: Staff recommends that the CPUC support giving all applicants the same opportunity to conduct a rural broadband experiment in their service areas, and not to favor one group of applicants over others. ROR incumbents already receive federal high-cost subsidies and, in states such as California, also receive state high-cost subsidies to facilitate deployment of service to all high-cost areas within their territories. If the incumbent has not deployed (or planned to deploy) advanced services in certain parts of the incumbent's service area, it may be that the carrier has determined that the unserved area is not economical to serve even with the current high-cost support the carrier receives. At the same time, it is possible that other service providers using different technological solutions may be able to deploy broadband and voice service in these unserved areas at a lower cost.

Permitting non-traditional service providers to compete to participate in these experiments on the same footing as the incumbent ROR carrier, will help the FCC reach its stated goals for these experiments -- to speed innovation and identify more effective ways to bring advanced services to all Americans.⁹ In particular, the FCC wants "to better understand the viable business models that could support the deployment of fiber or other next generation wired technology in rural areas despite the challenges we have described. To that end, the FCC is committed to ensuring that Americans living in rural areas, and on Tribal lands, enjoy enhanced access to new technologies."¹⁰

2. Issue: The FCC seeks comment on allowing proposals for rural broadband experiment in areas where the incumbent is an ROR carrier to be made at the census block level in lieu of the census tract level, in recognition that smaller providers may wish to develop proposals for smaller geographic areas.¹¹

Recommendation: Staff recommends that the CPUC support this proposal. Some of the census tracks in rural areas of California are very large. Permitting deployment by census block will allow smaller providers to participate and will permit the applicant to focus on local solutions that may be more suitable to the rural area in question.

⁸ *Id.*, ¶ 207.

⁹ *Id.*, ¶ 6.

¹⁰ *Id.*, ¶ 90.

¹¹ *Id.*, ¶ 209.

3. Issue: The FCC proposes overarching criteria for selecting which specific experiments will receive CAF subsidies, as follows:

- cost effectiveness;
- the extent to which the applicant proposes to build robust, scalable networks;
- the extent to which applicants propose innovative strategies to leverage non-Federal governmental sources of funding, such as State, local, or Tribal government funding ; and
- whether applicants propose to offer high-capacity connectivity to Tribal lands¹².

The FCC further proposes that cost effectiveness be the primary criteria in evaluating which applications to select for the experiment.¹³

Recommendation: Staff recommends the CPUC support these overarching criteria. Any of the criteria could be the primary one, depending on the specifics of the proposed experiment.

Staff also recommends that the CPUC support adding a fifth criterion. When allocating CAF monies to rural broadband experiments, the FCC should take into account the proportion of a State's contributions to the Universal Service Fund (USF). This additional criterion would be of particular interest to California, which is a net contributor to the USF.

4. Issue: The FCC seeks comment on what information it should require applicants to include in their formal proposals for rural broadband experiments, and lists numerous suggestions.¹⁴

Recommendation: The FCC specifically asks whether applicants perhaps should include in their broadband experiment proposals the potential for deployment to anchor institutions. The CPUC should support this proposal, and should emphasize the importance of deployment to anchor institutions. In addition, the CPUC should support a requirement that an applicant include in its application the number of health care providers, schools and libraries etc. that are physically located within the eligible census blocks, and which would be potential beneficiaries of the experiment.

5. Issue: The FCC asks if there should be flexibility to deviate from the scoring system it adopts in order to achieve diversity of projects, both in terms of geography and types of technologies.

Recommendation: The CPUC should urge the FCC to ensure diversity in terms of both geography and types of technologies when choosing among the applications. A trial of the type

¹² *Id.*, at ¶¶ 211- 216. (Over 997 service providers have “expressed interest” in possibly applying to conduct a Rural Broadband Experiment).

¹³ *Id.*, at ¶213

¹⁴ *Id.*, ¶218.

the FCC proposes offers the applicant and the FCC the opportunity to glean considerable information. The broader the base from which that data is drawn, the more useful it would be to the FCC, the applicants, and the states.

Assigned Staff: Rob Wullenjohn, Roxanne Scott, Michael Morris, Felix Robles, and Zenaida Tapawan-Conway for Communications Division; Helen Mickiewicz, for Legal.

HMM/RS:nas